



**The Comptroller General
of the United States**

Washington, D.C. 20548

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Decision

Matter of: Herman Miller, Inc.

File: B-234704

Date: July 10, 1989

DIGEST

1. Protest against delivery order to Federal Supply Schedule contractor on ground that contractor's quote failed to meet several of the specifications is denied where agency shows that all but one of alleged deviations in fact meet the specifications, and the one deviation is reasonably waived as minor; in any case, where contractor responds to request for quotations (RFQ), quote need not literally meet all the RFQ's requirements where it is at the lowest price and is found to meet the government's actual minimum needs.

2. Rejection of protester's low quote under Federal Supply Schedule procedures is upheld where the agency found that the quote would not meet its minimum needs due to two specification deviations it determined were material, the finding appears to have a reasonable basis, and the protester fails to rebut the finding.

DECISION

Herman Miller, Inc., protests the issuance of a Federal Supply Service (FSS) contract delivery order to Westinghouse Furniture Systems (WFS), in response to request for quotations (RFQ) No. N68836-89-Q-0037, issued by the Naval Supply Center, Jacksonville, Florida, for systems furniture. Miller alleges that the systems furniture offered by WFS does not comply with the specifications and that Miller should have received the award as the low bidder. We deny the protest.

On December 15, 1988, the Navy requested quotes for systems furniture to outfit a new building for the Navy Regional Data Automation Center (NARDAC), in accordance with the procedures established under General Services Administration (GSA) non-mandatory FSS 71, Part II, Section E, for systems furniture. The RFQ was issued to all 14 contractors on the schedule. The systems furniture requested consisted of

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183 prototypical "A" workstations, 15 prototypical "B" workstations, and 2 prototypical "C" workstations. Vendors were to submit prototypical workstation drawings, including a list of all panels and components for the project. All labor, equipment, and materials to assemble, install, and electrify the furniture was to be included. The vendor's total price was to be for all items, including items not listed on the prototypical workstation drawings, necessary to provide a complete installation.

On January 3, a site visit was held, at which time Navy officials answered questions from quoting vendors. Several questions were related to the type of electrical power used by NARDAC. The building is provided with two types of power, the normal shore power ("dirty" power) and electrical power that is first processed through an uninterrupted power source ("clean" power). "Clean" power is used exclusively for computer equipment. The separation is necessary because "dirty" power is subject to fluctuation, making it unsuitable for sensitive computer equipment.

One of the issues clarified at that time was that the flip panel feature for the data outlet and dedicated ("clean" power) outlet was to be located on the work surface itself, not on the panel or elsewhere at desk height, as had been allowed under the specifications. Also clarified was that, although the specifications called for an eight-wire electrical system, the critical requirement was for two "clean" circuits and one "dirty" circuit with no shared ground, in order to eliminate any possible bleed-over. Hence, the Navy would consider a system with a different number of wires if provided with data on how the main requirement would be accomplished. On January 6, amendment 0001 was issued to extend the due date for quotes and incorporate the minutes of the site visit, including the answers to the questions, into the RFQ.

On the due date for quotes, January 19, three quotes were received. Miller quoted the lowest price, \$519,267.68, and WFS was second low at \$554,020. Miller's quotation took exception to four specifications, two of which the Navy found significant enough to render Miller's quote unacceptable: (1) lack of desk height outlets on the work surface as specified in amendment 0001, and (2) lack of double-hinged, receding, sliding cabinet doors as required by the specifications. As Miller's quotation had stated unequivocally that it did not manufacture a work surface dedicated outlet and data outlet, and that its cabinet doors were not manufactured with double hinges, the Navy decided Miller's quote could not meet its minimum needs and no longer considered it after January 25. The quotation from WFS also

contained deviations, but WFS amended its quotation to correct most of them, which resulted in an increase in price to \$559,670.27, still second low. The deviation that remained was deemed minor by the Navy, and it thus issued a delivery order to WFS. Miller then filed this protest with our Office.

Miller protests that WFS' quote does not meet the specifications on a number of points, and thus should not have been accepted: (1) WFS' system does not allow for separation in the raceway for electrical and data communication wires; (2) as opposed to the 8-wire system required by the specifications, WFS quoted a 12-wire electrical system, which is not an acceptable product on WFS' GSA schedule, and is not UL approved; (3) WFS' quote does not provide for a minimum 65 percent of the panels being powered and electrified and having receptacles; (4) WFS does not manufacture a desk height electrical system as required in the specifications, and that the WMT3390 it has proposed to meet the requirement is not allowed under WFS' GSA system furniture contract; (5) WFS quoted a 36-inch task light in workstation "A" whereas the specifications require that task lights run the entire length of cabinets, in this case, 60 inches; and (6) WFS failed to quote prices for paperflow products, markerboards, coat hooks, shelf dividers, stationary dividers, and data outlets.

The Navy claims that WFS' quote meets the specifications, either as originally stated or at least as amended, on all the cited points but one, which it claims is a minor deviation easily waivable. In any case, it claims that Miller's quote did not meet the specifications in two significant aspects and hence, could not meet the Navy's minimum needs and was properly rejected.

The Navy has provided explanations as to WFS' compliance with all six alleged deficiencies in its proposal. First, as to the allegation regarding WFS' separation in the raceway for electrical and data communication wires, the Navy has replied that WFS' system consists of a metal base raceway, divided by a metal separation down the center, with a trough on both sides which allows for electrical and data communications wires to be separated. According to the Navy, WFS' system provides further for the required separation by encasing its electrical wiring in a metal conduit. Second, in regard to the percentage of powered panels proposed by WFS, the Navy replies that WFS is providing 2,328 linear feet of powered panels and 1,194 linear feet of non-powered panels, which equates to more than 66 percent powered panels with receptacles. WFS' system does contain conduit jumpers which allow for outlet

placement according to the user's needs, but they meet the specification for electrified receptacles, and are not simply an "extension cord," as maintained by Miller. Third, as to the alleged deficiency regarding the length of the task light, WFS initially proposed a 36-inch task light, but subsequently amended its quote to provide a 60-inch task lights, putting WFS in compliance with the specifications. Fourth, as to the six items for which Miller claims no individual price quotation was set out, most of the items had individual prices available and moreover the specification requires only that the total price include those items. WFS' quote included prices for all but stationery dividers for drawers, because WFS does not supply them. (The Navy waived this minor requirement since the total cost for the dividers would be \$136, a fraction of the contract price. See, e.g., Columbia Research Corp., B-227802, Sept. 24, 1987, 87-2 CPD ¶ 295.)

Miller has failed to rebut the agency's explanation as to these four alleged deficiencies in its comments on the agency report. Where an agency specifically addresses issues raised by the protester in its initial protest and the protester fails to rebut the agency response in its comments, we consider the issues to have been abandoned by the protester. Precision Echo, Inc., B-232532, Jan. 19, 1989, 89-1 CPD ¶ 22.

Miller does rebut the agency's explanation as to the remaining two alleged deficiencies, but we find Miller's position unpersuasive. Miller has alleged that WFS cannot meet the requirement for a desk height electrical system and that WFS has attempted to meet it through the use of a product WMT3390, an "open market" product not contained on WFS' FSS contract, which Miller claims violates GSA regulations. However, the Navy reports that, while WFS does not list a desk height electrical system on its FSS schedule, WFS has met the specification by offering a configuration of equipment, all components of which (including WMT3390) are in fact on WFS' FSS schedule. WFS quoted the item as "open market" because the cost of combining the components (about \$13,000) is not listed as part of WFS' FSS contract. In support of its position, the Navy cites Navy Supply Acquisition Regulation Supplement § 8.405-2(b), which allows the combining of FSS schedule items with open market items as long as a purchase order is the document used and the open market portion does not exceed \$25,000. As the facts here meet those qualifications, the Navy's action appears appropriate and reasonable. Miller cites in support of its position provisions of GSA FSS schedule OOSC 7167, prohibiting contracting officials from specifying open market items in requests for requotes.

However, this is clearly not what happened here, and the provisions thus are inapplicable.

Miller's allegation that WFS' quoted 12-wire electrical system will not meet the specifications is similarly unfounded. The original specifications called for an eight-wire electrical system. However, as explained above, at the site visit it was clarified that the agency's real requirement was that two "clean" circuits and one "dirty" circuit be provided with no shared ground, and that the number of wires in the system was not significant. Contrary to Miller's assertion, this change was incorporated into the specifications by amendment 0001. Miller meets the specification by offering a double application of its six-wire standard electrical system, which is on WFS' FSS schedule and is UL approved. One six-wire system will be dedicated to the "clean" power circuits and the other to the "dirty" power so that there is no shared ground. This approach meets the RFQ requirements, as amended.

In any event, it was not necessary that WFS' quote strictly comply with the specifications. When vendors respond to a formal solicitation (request for proposals or invitation for bids), they must respond with offers that comply with all material provisions of the solicitation, or their bid will be found nonresponsive or their proposal unacceptable. When quotations are requested from FSS vendors, however, the situation is very different. Quotations are not offers that can be accepted by the government; rather, they are information responses, indicating the equipment the vendors would propose to meet the agency's requirements and the price of that equipment and related services, that the government may use as the basis for issuing a delivery order to an FSS contractor. There is, therefore, no requirement that the quotation comply precisely with the terms of an RFQ, since the quotation is not subject to government acceptance. Spacesaver, B-224339, Aug. 22, 1986, 86-2 CPD ¶ 210, aff'd, Spacesaver--Reconsideration, B-224339.2, Sept. 19, 1986, 86-2 CPD ¶ 328, aff'd, Spacesaver--Second Reconsideration, B-224339.3, Oct. 16, 1986, 86-2 CPD ¶ 435. Under the Federal Acquisition Regulation (FAR), the agency not only can, but must, place orders against the multiple-award schedule contract which offers the lowest price, but only to the extent that the contract offers precisely the item determined necessary to meet the minimum needs of the government. FAR § 8.405-1; Herman Miller, Inc., B-232839, Jan. 26, 1989, 89-1 CPD ¶ 79.

Miller's low quote was rejected, the Navy explains, because unlike WFS' system the deficiencies in Miller's system were deemed material such that the system would not meet the

agency's minimum needs. The Navy claims that the specifications were designed to accommodate the separation of the electrical requirements needed for sensitive computer equipment. Hence, the specifications, as amended, required the dedicated outlet and data outlet, i.e., the "clean power" outlets for the computer equipment, to be on the work surface; in this way, they would be hidden behind the personal computers, and would not be readily accessible to "dirty power" users, e.g., for housekeeping equipment, etc., which the Navy claims could damage data transmissions. Contrary to this requirement, Miller proposed putting the outlets on the panel, which is considered unacceptable by the Navy because they would be in open view.

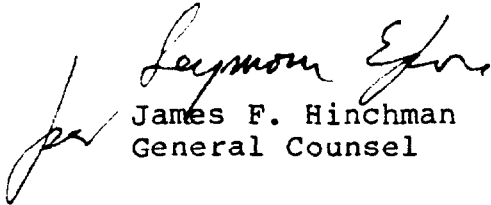
In reviewing an agency's assessment of technical acceptability, we will not substitute our evaluation for the agency's but will only examine the agency's assessment to insure that it had a reasonable basis. Herman Miller, Inc., B-230627, June 9, 1988, 88-1 CPD ¶ 549. In this case, the Navy's rationale appears well-founded, and as Miller did not rebut the agency's position in its comments to the agency report, we have no basis to question the Navy's finding. (Miller's quote was also found unacceptable due to its failure to meet the requirement for double-hinged cabinet doors, but given Miller's failure to meet the outlet requirements, we need not consider this deficiency.)

In its comments on the agency report, Miller claims that it was never informed of its system's deficiencies until after the award to WFS. However, the Navy relied on Miller's statements in its quote that the firm did not manufacture a dedicated outlet and data outlet on the work surface and that its cabinet doors were not double-hinged, in determining that discussion of the deficiencies with Miller would serve no useful purpose. We find that determination reasonable.

In its comments on the agency report, Miller raises for the first time several new grounds for protest, all of which it was either aware or should have been aware at the time of the original protest. Our Bid Protest Regulations require that protests be filed no later than 10 working days after the basis for protest was or should have been known.

4 C.F.R. § 21.2(a)(2) (1988); Discount Machinery & Equip., Inc., B-231068, June 24, 1988, 88-1 CPD ¶ 608. Hence, the new allegations are untimely and will not be heard.

The protest is denied.


James F. Hinchman
General Counsel